



**MINUTES**  
**CANBY PLANNING COMMISSION**  
**7:00 PM – Monday, May 10, 2021**

**PRESENT:** Commissioners Larry Boatright, Jennifer Trundy, Jeff Mills, Michael Hutchinson, and James Hieb

**ABSENT:** John Savory and Jason Padden

**STAFF:** Erik Forsell, Associate Planner; Ryan Potter, Senior Planner; and Don Hardy, Planning Director

**OTHERS:** Al Jeck, Hal Keever, Kevin Apperson, Kelly Ritz

**CALL TO ORDER**

Vice Chair Boatright called the meeting to order at 7:00 p.m.

**CITIZEN INPUT ON NON-AGENDA ITEMS** – None

**MINUTES**

Approval of Planning Commission Minutes for April 12, 2021

**Motion:** A motion was made by Commissioner Mills and seconded by Commissioner Hutchinson to approve the April 12, 2021 Planning Commission minutes. Motion approved 5/0.

**NEW BUSINESS** - None

**PUBLIC HEARINGS**

- a. To consider a proposal to approve and recommend approval of the Hemmerling Subdivision Project which contains four separate requests culminating into one proposal:
  - i. A request to recommend approval to the City Council for a Comprehensive Plan Map amendment to amend the designation of the subject property on the Comprehensive Plan Map from Low-Density Residential to (LDR) to Medium-Density Residential (MDR). **Hemmerling - [CPA 21-01]**
  - ii. A request to recommend approval to the City Council for a Zone Map amendment to amend the designation of the subject property from Low-Density Residential (R-1) to Medium Density Residential (R-1.5). **Hemmerling - [ZC 21-01]**
  - iii. A request to approve a subdivision of the ~ 3.17 acre property into 20 separate legal lots with associated public and private improvements. **Hemmerling - [SUB 21-02]**
  - iv. A request to approve a Major Variance to the building setbacks of the (R-1.5) Zone. **Hemmerling - [VAR 21-02]**

Vice Chair Boatright opened the public hearing and read the hearing statement. He asked if any Commissioner had conflicts of interest or ex parte contacts to declare for any of the applications.

Commissioner Hutchinson said this development would be down the street from his house and he walked his dog by the site frequently.

Staff Report: Erik Forsell, Associate Planner, presented the staff report. This was one project consisting of four different items. There was a Comprehensive Plan Map amendment to change the site from Low Density

Residential (LDR) to Medium Density Residential (MDR) and concurrently a Zone Change request from Low Density Residential (R-1) to Medium Density Residential (R-1.5). There was also a request to approve a 20 lot subdivision and to approve a variance to the building setbacks. He reviewed the approval criteria for the Comprehensive Plan Amendment and Zone Change. The subject property was located at 102 NE Territorial Road and was approximately 3.17 acres. The property was relatively flat with existing structures that would be removed as part of the development proposal. It contained frontage along N Locust and NE Territorial. Surrounding uses included: Clackamas County Exclusive Farm Use (EFU) zoned land to the west, N Locust and R-1.5 subdivided land to the east, Dodd's subdivision to the north, and NE Territorial to the south. Staff found that the proposed Comprehensive Plan Map change was largely consistent with the Statewide Planning Goals and Canby's Comprehensive Plan itself regarding increasing housing supply. There were no Goal Exceptions requested as part of this proposal. The traffic analysis recommended reducing foliage for sight distances on the N Locust approach onto NE Territorial. The analysis also showed that the project did not degrade performance for any existing or planned transportation facility beyond what was allowed in the current zone or proposed zone. Staff recommended approval with conditions. He then reviewed the recommended conditions.

Questions: Vice Chair Boatright was concerned about changing the Comprehensive Plan and setting a precedent.

Commissioner Hieb asked if the County EFU land would continue being farmed or would become residential development.

Mr. Forsell explained the property was not in the Urban Growth Boundary nor in the City limits. It would be many years before it was developed.

Commissioner Hutchinson said when this land was brought into the Urban Growth Boundary, was it given a blanket zoning of R-1 as general habit with the idea that it would be changed as necessary?

Mr. Forsell said it was intentionally zoned R-1 to follow the N Holly Development Concept Plan. This instance was different with the proximity to Territorial and adjacency to R-1.5 land.

Commissioner Mills was also concerned about setting a precedent of changing the Comprehensive Plan at will. He asked what the difference was between a Comprehensive Plan and Zoning Map and the hierarchy.

Mr. Forsell said the Comprehensive Plan was the guiding principal document and the Zoning Map was the implementation tool of the Comprehensive Plan. He did not think they should change the Comprehensive Plan at will, but staff thought in this instance that it was a fairly marginal change. There were findings in the Comprehensive Plan that spoke about this area eventually being more intensely developed, especially along Territorial. This property was adjacent to other R-1.5 properties. He did not think these requests would become common as they were difficult to achieve.

Mr. Forsell discussed the subdivision and variance applications next. The applicant was proposing to subdivide the subject property into 20 legal lots to be developed with single family dwellings. The applicant would be required to dedicate and improve frontage along N Locust and NE Territorial. The minimum and maximum lot sizes for single family residential development in the R-1.5 zone were 5,000 and 6,500 square feet respectively. Two of the 20 lots were substandard to the zone, lots 17 and 18. Staff calculated that the average lot area was 5,165 square feet and met the standards of the 5,000-6,000 square foot range and the exception could be granted. He discussed the subdivision approval criteria and the applicant's preliminary plat and site plan. The private alley tract was shown to be 20 feet wide. The applicant would need to confirm with Canby Fire District that this tract was a sufficient width for fire protection services. The applicant did offer in their application submittal to sprinkler the structures on these lots should Canby Fire find that was necessary. The applicant would need to demonstrate in site plan submittals that these lots could accommodate two vehicles in

the driveway so that on-street parking demand was reduced to a greater extent. The applicant's traffic analysis did not indicate the need for a traffic study. Staff received comments from Public Works about installing a pedestrian crossing located along NE Territorial and N Locust frontage to cross the right-of-way. This would be an additional recommended condition of approval. There was a significant nexus to the development itself and it was a roughly proportional request that would bolster pedestrian safety and connectivity. The connection would be striped and signed according to Public Works standards. If this condition was imposed, the applicant would coordinate with Public Works to install the crossing at an exact location to be determined by Public Works and the City Engineer. Five public comments had been received as of May 5, 2021. The comments were related to traffic congestion and speed along NE Territorial as well as pedestrian safety. There were general comments about the Planning Department and elected officials as well as concerns about water quality, power availability, and rezoning. There was one comment in favor of the Comprehensive Plan Amendment and Zone Change. Staff recommended approval of the subdivision with the identified conditions and adding a condition for the pedestrian crossing.

Mr. Forsell said the variance was being requested in order to provide more flexibility in the building area/dimensions (i.e. building envelope). Specifically they were requesting a variance to reduce the interior setbacks from 7 feet in width to 5 feet in width (a 28.5% reduction to the required standard) for the interior lot setbacks on lots 17, 18, 19, and 20. They were also requesting a reduction in the rear setback of lot 18 from 20 feet to 15 feet. He explained the approval criteria and how the Planning Commission had the authority to grant the variance request. The code stated that the variance must consider "circumstances" that applied to the property which did not apply generally to other properties in the City and within the same zone. Staff did not find this an extraordinary circumstance. There were a number of properties throughout the City that developed along collector roads and NE Territorial itself; almost all of them pursued a standard setback process. The simple fact that the subdivision was located near a linear road traversing along a common boundary line did not constitute an extraordinary or unusual circumstance. The applicant stated that the proposed request would result in the similar lot width/depth and density as other lots located throughout the City. If this acreage was divided by the minimum lot size in the R-1 District (i.e. 7,000 square feet), approximately 20 lots could be yielded. However, due to connectivity requirements and the large amount of right-of-way being exacted by the City, only 2.47 acres was available for development. This resulted in over 22% of the property required to be public roadway. On average 20% of the land in a subdivision was used for streets and/or utilities. In order to yield the same density of lots, the applicant requested a change in the zoning from R-1 to R-1.5 to yield the same number of lots. Granting the variance requests would enable the construction of a traditional house on lot 17. Staff did not think the applicant substantially lost property rights that were otherwise allowed by the properties of similar character and the applicant had not provided evidence that the amount of dedication was excessive when compared to other similar developments in the City. The property rights were largely the same – homes could still be constructed on lots that were more constrained than others in the remainder of the subdivision. Staff believed the major variance was not a macro level tool used to make certain housing products easier to construct; rather it should be treated as a surgical instrument for specific hardship relief. Staff noted that the variance was not needed to achieve the minimum required density for the R-1.5 zone itself and did not have a material impact of density requirements. The applicant was requesting a Comprehensive Plan Amendment and Zone Change to upzone the property and increase the density of the property. The argument that the applicant could then subsequently request a variance did not pass the "straight face test." Staff found that variances of this type generally had the effect of eroding the intent of the City's Land Development and Planning Ordinance (e.g. spot zoning or the eroding of the R-1.5 zone to something approaching more similar to R-2). The setbacks were set for a variety of reasons: an acceptable distance between neighbors, buffers to allow access, a suburban medium density "feel and appearance," among others. Should the applicant request a process to begin a discussion about the appropriateness of the current code, that option was available and might be a better public process by vetting such changes through the City Council. While not necessarily directly impactful to other properties, the requested setback variance would create even less room for fencing, yard space, accessory structures, and generally increased the massing and aesthetics of this portion of the subdivision. The City's setback requirements were intended to provide physical separation

between houses for compatibility. Staff found that the applicant had not demonstrated why a minor variance, a different building product, or subdivision layout would not be better options for alleviating the applicant's described hardship. The applicant stated that typically dedication within subdivisions did not exceed 20% of the subject property but in this particular case the proposed subdivision was being required to provide a significant amount of right-of-way (over 22% of the parcel) to accommodate future connectivity and roadway widening along two frontages. Due to the larger than average amount of land dedication, the amount of developable land on this particular parcel had been reduced. This was unique to this property and beyond the control of the applicant. Staff did not agree with the applicant's assertion that this development project in its totality amounted to a unique or exceptional condition that necessitated a variance. The applicant stated that dedications did not typically exceed 20% and in this instance approximately 22% of the parcel was required for dedication. While it might be true that this property fronted two streets that required dedication and improvements, the uniqueness or exceptionality of the requirements and the subject property itself were not so extreme as to support a major variance. Additionally staff contended that the dedications and exactions had an appropriate nexus to the development project and were roughly proportional impacts. To summarize, the intent of the setbacks was to ensure that properties had appropriate massing—this was especially the case with the rear yard 15-foot for 1 story and 20-foot for 2 story setbacks. Smaller lots with reduced setbacks increased the massing which impacted aesthetics and acceptable distances from neighbors. The applicant was requesting a Comprehensive Plan Map Amendment and Zone Change which was essentially an upzone increasing the amount of buildable lots. This request when reviewed hand in hand with a major variance was difficult for staff to make positive findings. Prima facie evidence in the applicant's submittal lead staff to believe that the applicant was seeking to not only gain additional lots but also special exceptions to fit a desired building product onto the subject property—a self-created hardship. Staff acknowledged this property required frontage dedications and public improvements. These were not unique and the fact that dedication and improvements were required did not constitute a unique or extraordinary circumstance. Every land use decision should be evaluated on its own merits and circumstances and by the current staff and Planning Commission who evaluated land use decisions in Canby. Not enough evidence was provided that indicated the applicant went through a thorough and exhaustive analysis that provided alternative options for building product or lot layout. Staff understood the applicant had economic analyses as part of their business model and likely wanted to maximize profit for the subdivision process; however the code's plain language did not anticipate those considerations.

Mr. Forsell said the applicant had submitted comments about the turnaround at the end of the public streets and how they should not be required. Canby Fire District was a different entity from the City and if the Fire District found that no temporary turnarounds were needed that could be addressed at pre-construction and would satisfy the condition. The applicant also asked the City to reconsider the setback variance for lot 17 to increase the house envelope given the constraints of the lot. Mr. Forsell thought the applicant could seek relief later if needed. The applicant said the ADA crosswalk condition was not consistent with previous conditions and posed constructability issues with the existing conflicting utilities and existing trees. Mr. Forsell said the requested crosswalk location had limited impacts to existing utilities and trees.

Staff recommended denial of the variance request. The variance request did not limit the ability of the Comprehensive Plan Amendment, Zone Change, or subdivision from gaining approval. The applicant was not precluded from seeking relief on individual lots on a case by case basis. Should the Planning Commission wish to approve the variance, staff would need a motion and direction to indicate that motion in the final written findings.

Questions: Commissioner Hieb agreed it seemed a bit much to ask for the rezone and the variances when they could scale back the development.

Mr. Forsell said they could reduce a lot or alter the overall plan, which was the reason for staff's recommendation for denial of the variance.

Applicant: Hal Keever, representing the applicant, said they had a problem with lot 17 for the building footprint. It was a triple frontage lot because it had frontage on Territorial, Locust, and an alley. It was dimensionally challenged and that was the reason for the request to at least get the variance on lot 17. Regarding the Fire Code, they would rather work with Canby Fire to come up with alternatives instead of being required to put in the turnarounds. Regarding the ADA crosswalk, staff had explained a more reasonable location and he thought that was workable. There was denser development on Territorial and there was a housing need at all price points. They were trying to provide those housing opportunities and 20 lots were not excessive. He requested keeping the record open so that they could answer any questions or provide more information as needed.

Kelly Ritz, representing the applicant, discussed the variance for lot 17. It was a challenging lot due to the geometry of the property. They could come up with a better home if they could adjust the setbacks. Every lot they did not have made the others more expensive. Regarding the zone change, builders were being tasked to build more homes. She thought HB 2001 would allow this subdivision to be built as middle housing and if it stayed as R-1 they could build duplexes on the lots. However they wanted to build single family detached housing that would fit better in the neighborhood. She thought it was the best use of the property. Because of the configuration of the property, R-1.5 made it more feasible and they could have 20 lots instead of 15. She thought the crossing location as described by staff would work.

Al Jeck, representing the applicant, said the N Holly Concept Plan did not discuss R-1 versus R-1.5 as the appropriate designation. The main thing was the housing supply and demand analysis and how new housing was needed in the marketplace. Going to R-1.5 would help with the housing shortage as it would bring in an additional five lots.

Mr. Forsell said he was comfortable with changing the condition about the turnarounds to reflect that the applicant would work with Canby Fire on alternatives. He thought it would end up in a more favorable situation for everyone involved.

Commissioner Trundy said they had not heard any alternatives to the variance, such as only developing 19 lots or reconfiguring the site plan. She also did not appreciate the implication about putting duplexes on the site if this was not approved.

Ms. Ritz said she meant builders were under a lot of pressure to provide housing and they would like the ability to build a nice community. With the costs associated with building homes and site development, it was difficult to make it pencil if they did not have a reasonable number of lots to do the project. Builders were constantly being pushed to increase density.

Commissioner Trundy said it might be that the one set of lots that were dimensionally challenged should be developed as rowhouses or duplexes instead. Having different options would be appropriate. She thought they needed more information about why that lot had to be developed in this way. She also would like to know what type of house would be built on the lot.

Proponents: None

Opponents/Neutral: None

Vice Chair Boatright closed the public hearing.

Deliberation: Commissioner Mills thought these lots would not have the same character, access, or parking than other R-1.5 lots. It would be worse if the variances were approved. He asked if they could require more parking.

Mr. Forsell said no, that was why there was a condition to make sure they could accommodate two off street parking spaces in the driveways.

Commissioner Mills asked about the approach from Locust onto the alley and cars turning smoothly.

Mr. Forsell said the City Engineer required a commercial approach which would have gradual wings so that it would not be an abrupt 90 degree turn.

Commissioner Mills thought the application failed to meet the aesthetic of R-1.5 on the alley and adjacent lots.

Commissioner Hutchinson was also not in favor with the way the adjacent lots interfaced with the alley.

Commissioner Hieb was not in favor because of the setbacks, traffic, and parking.

There was discussion regarding whether or not to continue the hearing for further applicant and public comments.

**Motion:** A motion was made by Commissioner Hieb and seconded by Commissioner Mills to recommend denial of CPA 21-01 to City Council. Motion approved 4/1 with Commissioner Hutchinson opposed.

**Motion:** A motion was made by Commissioner Hieb and seconded by Commissioner Mills to recommend denial of ZC 21-01 to City Council. Motion approved 4/1 with Commissioner Hutchinson opposed.

**Motion:** A motion was made by Commissioner Hieb and seconded by Commissioner Mills to deny SUB 21-02. Motion approved 5/0.

**Motion:** A motion was made by Commissioner Hieb and seconded by Commissioner Mills to deny VAR 21-02. Motion approved 5/0.

b. To consider a request to approve a 12-unit multifamily development in the High-Density Residential (R-2 Zone). **State Street (DR 21-04).**

Mr. Forsell said the applicant requested to continue this hearing to address the public comments that had been received and to do a traffic analysis.

There was discussion regarding the date certain for the hearing.

Mark Wilde with State Street Homes said they were eager to get this back on the agenda.

**Motion:** A motion was made by Commissioner Trundy and seconded by Commissioner Hieb to continue the hearing for DR 21-04 to June 14, 2021. Motion approved 5/0.

**FINAL DECISIONS** (Note: These are final, written versions of previous oral decisions. No public testimony.)

These items were not discussed.

- a. Hemmerling (CPA 21-01 / ZC 21-01 / VAR 21-02 / SUB 21-02)
- b. State Street (DR 21-04)

## **ITEMS OF INTEREST/REPORT FROM PLANNING STAFF**

- a. Next regularly scheduled Planning Commission meeting – Monday, May 24, 2021

- b. Potential mini-trainings at the end of public hearings

Don Hardy, Planning Director, said they were working with DLCD on training on HB 2003 and possible funding for the Housing Needs Analysis.

#### **ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

None

#### **ADJOURNMENT**

***Motion:*** A motion was made by Commissioner Trundy and seconded by Commissioner Mills to adjourn the meeting. Motion approved 5/0.

The meeting adjourned at 9:15 pm.